



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/06698/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 February 2015**

**Determination Promulgated
On 25 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**PASHA DANESHVARAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer

For the Respondent: Ms K Chandrasingh, Duncan Lewis & Co Solicitors

DECISION AND REASONS

1. The respondent is a citizen of Iran and his date of birth is 11 July 1973. I shall refer to the respondent as the appellant as he was before the First-tier Tribunal.
2. The appellant made an application for asylum and this was refused by the Secretary of State in a decision of 19 August 2014. He appealed against the decision of the Secretary of State to remove him of 22 August 2014. The appellant's appeal was dismissed on asylum grounds by Judge of the First-tier Tribunal Pickup in a decision dated 10 November 2014, following a hearing on 28 October 2014. I granted the

appellant permission to appeal on 9 December 2014. The matter came before me to determine whether or not the Judge made an error of law. I drew to the attention of the parties that I had been the Judge to grant permission, but neither had any representations on this matter and both understood that the issue before me is not the same as that at the permission stage.

The Decision of the First-tier Tribunal

3. The appellant's case in summary is that his uncle was a member of the Mujahedeen and as a result he was arrested and executed about twenty years ago. The appellant left Iran and travelled to Dubai in 1999 where he worked in the family business for seventeen years. During this period he and his family were investigated by the authorities about their involvement with the Mujahedeen. In 2003/2004 the appellant was diagnosed with cancer and had to travel to Iran in order to receive treatment there. Between 2003 and 2008 he was questioned numerous times by the Iranian authorities and judiciary in relation to his perceived links with the Mujahedeen. In 2008 the appellant returned to Iran in order to reside there permanently. In 2010 he was asked to attend the Sepah office where he was questioned about a bomb in Esfahan. In 2012-2013 the appellant was detained for seven months in Evin Prison where he was subjected to torture. He was released in June 2013 as a result of the payment of a surety by his father.
4. The appellant started his journey to the UK in June 2013 and arrived here on 28 October 2013 when he made a claim for asylum. He fears that should he be returned he would be at risk from the authorities. The appellant has been in contact with his sister who lives in Dubai and who told him that their father has been detained in order to encourage the appellant to hand himself in. He has now been released but continues to be questioned.
5. Before Judge Pickup there was a psychiatric report by Dr Ganapathy of 14 October 2014 with an addendum of 20 October 2014. In addition the appellant relied on a report prepared by Dr Mohammad M H Kakhki of 26 September 2014. The appellant gave oral evidence relying on his witness statements of 22 November 2013 and 15 October 2014. The Judge made the following findings
 - (i) "I find there is no part of the appellant's account that I can accept as probably true. I do not accept that his account of events in Iran is accurate, truthful or reliable." ([40]).
 - (ii) The psychiatric report was prepared after a single examination and consideration of only the Home Office papers and a letter of instruction. There is no indication of the length of the interview and the report is based on an uncritical acceptance of the appellant's relatively short account of claimed events in Iran. The appellant was unable to identify to the doctor when in 2014 his symptoms of nightmares and flashbacks of torture commenced. The Judge found that "the extent to which this report can assist the appellant is limited" ([42]). He went on to find as follows:-

"... the report, even taken at its highest does not confirm that he was detained and tortured as claimed. There may be other reasons for symptoms attributed to PTSD, even if genuine and there are also other possibilities as how the appellant might have learnt to feign such symptoms, such as in discussion with others claiming asylum. No

assessment was made of the stress of the asylum process and the uncertainty of the asylum process and the delay in resolution with a prospect of being returned to Iran.

- 43 More concerning is that there were a number of significant inconsistencies between the chronology given to Dr Ganapathy and the appellant's asylum interview accounts. These are set out in the addendum report. Surprisingly, the doctor did not detect these for himself, even though he had all the Home Office papers, but instead they had to be highlighted to him in a request for him to amend his report and a suggestion that he may have misread his notes. That does not inspire confidence in the report. The inconsistencies included the date of marriage and divorce, a second marriage not referred to, and the year he was forced to sign a blank confession, as to who paid for his release, whether he was detained at the airport, the year he was detained for seven months, the year he was diagnosed with cancer, and the medical treatment. The inconsistencies were not just as to precise dates, but entire years. More significantly they include differences as to individuals involved and their role in the appellant's history.
- 44 Dr Ganapathy confirmed that the original report reflected the information in his notes, although it was not a word for word account of the interview. It follows that there was no mistake and the appellant had given the inconsistent account to the doctor. However, I find Dr Ganapathy's blanket acceptance of the suggestion made to him by the appellant's solicitors that these inconsistencies were symptomatic of the PTSD, and his comment that they are explained by the impairment in cognitive functions, rather concerning. One might have expected such an assessment to have been dealt with in rather more detail and indeed in the first report. One might expect him to make specific comment on the difference between an inability to recall, and the giving of specific dates that are inconsistent with an account previously given, and to address any distinction to be drawn between confusion as to precise dates and the roles of the characters described in his account. I find the doctor has made no critical assessment of these discrepancies, dealing with the issue rather superficially over a few lines of the addendum report, and failed to consider whether these discrepancies might also be explained by an untruthful feigned account.
- 45 Overall, I find the deficiencies in the report as highlighted above undermine the weight that can be attached to the report and ultimately that the inconsistencies rather undermine the appellant's account. In **IL (medical reports - credibility China**, it was stated that those writing such reports should ensure that before forming their opinions they study any assessments that have already been made of the appellant's credibility by the immigration authorities. The authors of such reports need to understand that what is expected of them is a critical and objective analysis of the symptoms displayed. Although just because a report relies heavily on the account given by the person concerned, that does not mean that their reports lack or lose status as independent evidence, but it may reduce very considerably the weight that can be attached to them. I find that the report does not meet the requirements of **IL**.

46 In summary, I found Dr Ganapathy's report poor, superficial, and ultimately unreliable for the reasons stated. Whilst I have borne in mind that the appellant may have had difficulties recalling precise dates, he did not appear to have such difficulties during his asylum account, which he largely stands by. There is no suggestion that his ability was better then, including when giving his lengthy witness statement to his representatives in November 2013, but worsened when interviewed by the doctor in October 2014. Although the appellant has given a further witness statement, dated after the medical examination, he has not made any statement explaining the discrepancies in the psychiatric report. I find that the discrepancies stated significantly undermine the credibility of the appellant's account and thus the report more adverse to his claim that (sic) helpful.

47 Notwithstanding the above, I have approached the evidence on the basis that a degree of caution and latitude should be accorded to the appellant's account and that it would be unfair to concentrate on minor discrepancies that could potentially be explicable by or attributable to PTSD."

(iii) The Judge highlighted a number of discrepancies and inconsistencies in the appellant's account at [53] and he went on to find as follows:

"54 I do not see that the appellant's various accounts as to this issue can coexist in the same world. His correction witness statement of 2014 does not really answer this concern. There are more discrepancies here than can be explained by a PTS allowance for memory problems. The appellant does not appear to have difficulties recalling events, even if precise dates are not able to be remembered. His accounts are quite elaborate and detailed. However, there are very significant discrepancies about his accounts that I find cannot adequately be explained by memory problems or confusion. Some of the appellant's present account flies in the face of clear contrary evidence from his own accounts.

...

60 I also find that even making allowances for possible confusion or memory lapses because of alleged abuse, the appellant has failed to provide a reasonable explanation for the inconsistencies and changes in his account and that this further undermines the credibility of his account. In the circumstances, in relation to the unsupported assertion that his uncle was executed, the appellant fails to meet the requirements of paragraph 339L in respect of that part of his claim and it remains unsubstantiated and cannot be accepted.

66 I have also considered the medical evidence, including the psychiatric reports and the other medical information and statements in the appellant's bundle but even taken at its highest this is insufficient to engage Article 3. Treatment for cancer related illnesses and/or PTSD is available in Iran, which has a well-functioning medical health system. I note that the appellant has had treatment in the UK but he also returned from Dubai to Iran to obtain treatment and operations. The only evidence of any recent or pending treatment does not include cancer treatment. Treatment for PTSD is said to be antidepressants, which is available in Iran. The appellant

claims to have had suicidal thoughts but is not actively suicidal and there is no evidence to suggest a suicide risk because of return”.

- (iv) The Judge took into account Dr Kakhki’s report. The Judge found that there were problems with the report and that it was “rather poor” (see [50]). He concluded that little if any reliance could be placed on it “it does not confirm the appellant’s account to any material degree and is of marginal relevance to the issues in the case once the findings of fact herein are made, although may taking into account all the evidence as a whole, including this report. Ultimately I find that the report does not materially assist the appellant’s case”.

The Grounds of Appeal and Oral Submissions

6. Ground 1 argues that the Judge failed to consider the report of Dr Kakhki which highlights evidence which postdates the country guidance case of SB (risk on return – illegal exit) Iran CG [2009] UKAIT 00053. Ground 2 argues that the Judge’s assessment of Dr Kakhki’s report in contrast to the background information cited by the respondent is inaccurate. Dr Kakhki refers to relevant Amnesty International evidence from 2011 which postdates the Danish Report relied on by the respondent and specifically deals with the material issue in dispute which was persecution of family members of MEK (The People’s Mujahedeen of Iran). The sources cited by Dr Kakhki cannot without justification be described as “less than objective” than those cited by the respondent.
7. The Judge did not give reasons why he preferred the information from the Danish Immigration Services cited by the respondent to the European Court of Human Rights case of Abdolkhani and Karimnia v Turkey (application number 30471/08).
8. Ground 3 argues that the Judge failed to take into account evidence relating to the appellant’s mental health and assess credibility in the round. The Judge found that the discrepancies in the appellant’s account “cannot adequately be explained by memory problems or confusion” but he does not justify this finding. The Judge rejected the findings of the expert and asserts that the discrepancies are evidence that the appellant is not telling the truth in order to enhance his claim. However the Judge did not consider that the appellant has given inconsistent evidence in other aspects of his account which are not remotely material to his claim, for instance the year he started his cancer treatment and the year he married or whether he is currently in a relationship. The Judge did not make findings in relation to the likely effects on the appellant of aggressive cancer treatment on his cognitive functioning which was at pages 91-99 of the appellant’s bundle and which would have a direct impact on the credibility assessment.
9. The Judge did not have regard to Dr Ganapathy’s opinion at 14(d) of his report that the appellant is “unlikely to be able to take part in the legal proceedings in a meaningful way” because of his cognitive impairment. The Judge dismissed the report of Dr Ganapathy because it was “based on an uncritical acceptance of the appellant’s relatively short account of claimed events” and he ignored the tests that Dr Ganapathy carried out (see paragraph 13.3 of the report) and the fact that Dr Ganapathy had considered whether the appellant was malingering or not. The Judge does not give adequate reasons for disregarding Dr Ganapathy’s analysis that the

appellant was not malingering. Dr Ganapathy is a medical professional who has fifteen years of experience in psychiatry and his view should accordingly be given more weight.

10. I heard oral submissions from both parties. Ms Chandrasingh relied on the grounds seeking permission to appeal and she asserted that the Judge did not take into account the appellant's illegal exit and that he would be returning to Iran as a failed asylum seeker. The Judge did not make clear findings in relation to his illegal exit and did not consider Dr Kakhki's evidence in relation to this which postdates the country guidance case of SB. The Judge failed to give adequate reasons for attaching no weight to Dr Kakhki's report. The inconsistencies in the appellant's account were not in relation to the core of his account, a large number were not material and simply showed that he has memory problems. The Judge did not take into account the testing undertaken by the psychiatrist and that it is an independent assessment.
11. Mr Whitwell made submissions in the context of the Rule 24 response of 29 December 2014. He stated that both the medical report and that of Dr Kakhki were challenged by the Presenting Officer at the hearing. There was no reason for the Judge to depart from the country guidance case of SB and the Judge gave reasons for attaching little if any weight to Dr Kakhki's report and Mr Whitwell referred me to paragraphs 48, 49 and 50 of the determination. Mr Whitwell indicated that the Judge accepted the finding of post-traumatic stress disorder but it was the causation that was in issue.

Error of Law

12. There were a number of discrepancies in the appellant's account that were raised by the Secretary of State in the Reasons for Refusal Letter. The appellant could not remember the year that he married and in his interview he stated that he returned to Iran to get married in 2001. In his witness statement he claimed to have returned to Dubai with his wife the next day. However in his interview he stated that when he arrived in Iran in 2001 his passport was confiscated and he was told to report to the Revolutionary Court in Shiraz the next day. It was not accepted by the Secretary of State that the appellant's uncle was a member of the MEK on the basis that there was not enough evidence to accept or reject this and that there was no objective evidence to show that former members of MEK have continued to face problems in Iran.
13. The Judge found inconsistencies in the appellant's account including those raised by the Secretary of State in the reasons of refusal letter and he found that there were more discrepancies in the appellant's account (see [55]-[58]). These inconsistencies related to the appellant's oral evidence.
14. Dr Ganapathy is a full-time consultant psychiatrist working in the NHS and there was no issue raised to his experience or expertise. He made the following findings:
 - "13.3 On testing his cognitive functions he was orientated to time, place and person. His attention and concentration was impaired. He was able to repeat, but had impairment in recall on tests of memory, thus suggestive of impairment. There was no impairment in writing or reading but sometimes required that the questions were repeated a few times. His insight into his condition was good".

15. He went on to find as follows:

14 Opinion and recommendations

(a) Diagnosis

Based on the history and examination, Mr Daneshvaran has reported being subjected to torture whilst in prison for seven months in 2013. He has presented with symptoms such as experiencing flashbacks and nightmares of these torture experiences as if he is reliving them. There is associated anxiety symptoms, panicky feelings, hyper vigilance, being startled, depressive symptoms including suicidal attempts and suicidal ideations.

These features are consistent with a diagnosis of post-traumatic stress disorder (PTSD (ICD10 code F43.1)). I have also taken into consideration as to whether Mr Daneshvaran may be malingering these symptoms. On balance of probabilities the information from history and mental state is consistent with a diagnosis of PTSD. Mr Daneshvaran has not had any psychiatric admissions nor is there a family history of mental health problems and in these situations patients can mimic symptoms by observing other patients, however this does not appear to be the case with Mr Daneshvaran.

(b) Prognosis

Any significant improvement in his mental state is unlikely to be expected in less than six months after the commencement of the treatment for PTSD.

(c) Recommendation of any treatment or any details of current treatment/medication

Based on the NICE guidelines on the treatment of PTSD, Mr Daneshvaran will benefit from a combination of medications and psychological interventions. He will need to be considered for treatment with higher dose of antidepressant medications such as sertraline which has good evidence base in the treatment of PTSD. He will need to be referred for psychological treatments for PTSD at the earliest possible opportunity. It will be useful if a copy of the report be forwarded to his GP with Mr Daneshvaran's consent so as to pursue the treatment options by the NHS.

(d) Mr Daneshvaran's capacity to take a meaningful part in the legal proceedings, current understanding of the process and when a change is likely to be expected.

Mr Daneshvaran has symptoms of PTSD with flashbacks, nightmares, anxiety and depressive symptoms. His cognitive functions including attention, concentration and memory are impaired based on the assessment. Hence in my view Mr Daneshvaran is unlikely to be able to take part in the legal proceedings in a meaningful way as well as be able to understand the process. His fitness to take part in the proceedings should be reassessed in six months' time after the commencement of the treatment for PTSD.

Also if Mr Daneshvaran was expected to take part in the legal proceedings in his current mental state or deported to Iran the memories and discussions in relation to Iran is likely to contribute to deterioration in his mental state and increasing the risks to his safety.

(e) Presence of any suicidal ideation or history of suicidal thoughts

Mr Daneshvaran reported of suicidal thoughts on a daily basis and feels that he does not want to wake up from sleep. On mental state examination he does not appear to be actively suicidal.

He reported of attempting to inject the serum injection used for cancer treatment in his vein in 2011 with the intention of ending his life. He reported not requiring any medical treatment and he still survived this.

In 2013 whilst in prison he stated of attempting to suffocate with pillows but was stopped by guards. He expressed hopelessness about his future and feels that sometimes belief in faith helps him to overcome suicidal thoughts. However he stated of having stopped praying and prefers to be on his own most of the time.

15. It was open to the Judge to reject the medical evidence or attach little weight to it subject to adequate reasons. However the Judge appears to have accepted the diagnosis made by Dr Ganapathy or at least to have made findings based on the appellant having PTSD (see [60]). Despite the strongly worded findings in relation to the report ultimately the Judge accepts the doctor's diagnosis, but he does not accept that it was caused by the appellant's detention. Dr Ganapathy does not consider alternative causes of post-traumatic stress disorder although he considers the possibility of malingering. The Judge does not refer to the findings of Dr Ganapathy in relation to the appellant giving evidence as cited above but he makes allowance for confusion or memory lapse because of "alleged abuse" (see [60]).
16. The Judge's findings are based on a number of inconsistencies, some of which arise in the appellant's oral evidence. This is despite the Judge seemingly having accepted the appellant's diagnosis of post-traumatic stress disorder. He should then have gone on to consider the impact of this on the appellant's cognitive functioning. The opinion of the doctor in relation to this goes further than "possible confusion or memory lapses because of alleged abuse." At [58] the Judge found that the appellant was a "poor witness in his own cause and frequently either failed to answer questions or failed to answer the question put to him. Questions had to be put repeatedly to him on a number of occasions". In the opinion of the doctor the appellant is unable to take part in the proceedings in a meaningful way. Having accepted that the appellant has post-traumatic stress disorder, the Judge failed to take into account material evidence, namely the impact of the disorder on his ability to give clear and meaningful evidence. This goes to the heart of credibility and is a material error of law.
17. In addition in relation to Dr Kakhki's evidence again it was open to the Judge to attach no or limited weight to this evidence subject to reasons. My concern is that the Judge has not given sufficient reasons to depart from the findings of the European Court of Human Rights in Abdolkhani and Karimnia v Turkey (application number 30471/08). The Judge refers to background evidence produced by the appellant at 114 of the appellant's bundle, namely the OGN on Iran of 8 October 2012 which (at 15.76) refers to the Danish Fact-Finding Report 2013 which indicates that the ICRC (International Committee of the Red Cross) is facilitating the voluntary repatriation to Iran of former ex-MKO members from Iraq and that once home they have the option of periodic follow-up visits and that since 2003 600 MKO members have been repatriated out of which the ICRC has assisted 200. In addition at paragraph 15.77 it

is stated that the same source reported that upon return to Iran such persons were to state to the Iranian authorities that they had given up their activities and “it was considered likely” that such persons had been interrogated upon return and that some had probably been jailed and then released. I am concerned that the Judge attached insufficient weight to the case of the European Court of Human Rights and he preferred the vague and rather general assertions made in the OGN without giving adequate reasons.

18. The Judge made a material error of law and I have set aside the decision to dismiss the appellant’s appeal pursuant to Section 12(2) of the Tribunals, Courts and Enforcement Act 2007. I heard submissions from the parties in relation to venue. It is clear that none of the findings from the First-tier Tribunal can be maintained in light of the material error of law. I remitted the case to the First-tier Tribunal in the light of the nature and extent of the judicial fact-finding which is now necessary in order to remake the decision pursuant to Section 12(2)(ii).
19. The appellant submitted further evidence with a covering letter of 5 February 2015. The evidence is a letter from Leicester City Assist Practice relating to the appellant’s mental health. It is a matter for the First-tier Tribunal to consider the admission of this evidence at the substantive hearing.

Notice of Decision

The decision of the FtT to dismiss the appeal is set aside and the matter is remitted to the FtT for a de novo hearing.

Signed Joanna McWilliam

Date 23 February 2015

Deputy Upper Tribunal Judge McWilliam